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Monday, April 25, 2022

VIA ECF

Honorable District Judge John P. Cronan
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Courtroom 20C
New York, New York 10007-1312

Re: Kaye v. Health and Hospitals Corporation et. al.
18-CV-12137(JPC)(JLC)

Dear Honorable District Judge Cronan:

Plaintiff respectfully writes consistent with my duties as an officer of the Court to advise it on matters relevant to the proper decision of the case. During the course of my efforts to respond to Defendants' motion for summary judgment, I have come to the realization that Defendants have filed their motion based on the wrong complaint. (Exhibit 1: Amended Complaint ECF. Dkt. 22)

On May 2, 2019, I submitted two applications to re-file Plaintiff's Amended Complaint. I filed the application as of right pursuant to Fed. R. Civ. P. 15, and based on directions from ECF Quality Control. The latter instructed me that I had to have leave of the Court to re-file Plaintiff's complaint. (Exhibits 2 and 3: Application to Re-file and Memo Endorsement from the Honorable Judge Oetken (ECF Dkts. 25 and 28 respectively))

During the course of Plaintiff's deposition on November 15, 2021, Defense Counsel began to ask Dr. Kaye a series of questions from a version of the complaint that had not been accepted by the Court. To be clear, the request to re-file pertained to Plaintiff's Amended Complaint as it was re-filed on and dated May 3, 2019. (Exhibit 4: May 3, 2019 Plaintiff's Amended Complaint (ECF Dkt. 29) After one or two questions, it was made clear that Defense Counsel was working from the wrong complaint (Exhibit 5: Excerpts from the Deposition of Melissa Kaye, M.D. pages 195-199):

MS. CANFIELD:

Let me make sure that I have the operative complaint. This is the complaint I have. It's dated May 30th. I mean, it's dated April 30th, but it was filed on May 2, 2019. And the copy that I have –the hardcopy at my desk is dated April 30th) (Exhibit 5: p. 197:8-13)

MS. HAGAN:

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Well, actually, the one that was filed – one of the versions that was filed with the Court was filed on April 30, 2019. And it had ECF Docket 22.

MS. CANFIELD:

The one I'm working from is Docket No. 25-1

MS. HAGAN:

Okay. Let's see what this one is. Because there should be another one that was actually filed on May 3rd. There should be one that's dated May 3rd. That's the one that you're not showing. (p.197:8-25)

MS. CANFIELD:

Thank you. And apologies to everyone for sharing the wrong complaint that appears to be the –I don't know if that was a proposed First Amended Complaint, but it's not the one that was eventually filed on the docket. I do have the proper document now. It's ECF No. 29. It was filed on May 3, 2019. (Exhibit 5: 198:24-25-199:1-5)

Based on the foregoing, Plaintiff is contacting the Court in an effort to preserve its resources and to have this matter resolved on the merits. Defendants filed an answer to an inoperative complaint and were corrected at Plaintiff's deposition. Additionally the two complaints referenced herein have significant distinctions: the Complaint used by Defendants has 29 pages and 153 paragraphs; while the operative complaint that was filed on May 3, 2019 has 32 pages and 177 paragraphs. Accordingly, Plaintiff seeks leave of the Court to have a Teleconference to address this error at the Court's earliest convenience.

Respectfully submitted,

/s/

Special Hagan, Esq.

Attorney for Melissa Kaye, MD

Cc: Donna Canfield, Esq.
Counsel for Defendants